

## **INSERT A: Changes other than editing from proposed to adopted version**

Chapter 173-18, 20 and 27: No changes.

Chapter 173-22 WAC: Section 173-22-030(2) – Definition of floodplain simplified.

Chapter 173-26 WAC

WAC 173-26-020(9), WAC 173-26-221(2) and other locations – The concept of critical resource areas has been removed to avoid potential complications with administration of critical areas ordinances at the local level. Changes were made in response to comments from the Department of Commerce.

WAC 173-26-080 – City of Oakville and Yelm are removed from the list of local governments required to develop and administer a shoreline master program.

WAC 173-26-201(3)(c)(i) – Language was added to ensure special attention will be paid to identification of “ecologically intact blocks of upland vegetation, developed areas with largely intact riparian vegetation”. This is consistent with other rule amendments.

WAC 173-26-201(3)(d)(i) – Text removed: “...and tidelands not reserved for water dependent use or development” to make more consistent with intent of reserve areas subsection.

WAC 173-26-201(3)(d)(vii) – Proposed water quality and quantity language referring to shellfish areas was replaced with: “Review data and information specific to shellfish areas. Identify measures to protect water quality for human health as described in WAC 173-26-221(6).” This adds more clarity regarding what’s expected of local governments.

WAC 173-26-211(2)(c) – Text at end of subsection deleted to correct reference to Growth Management Act (GMA) statutes. Now ends at “map”.

WAC 173-26-211(5)(b)(iii)(E), (5)(d)(iii), and (5)(e)(iii) – The word “rural” was added to read “...limited areas of more intensive rural development”. This section was reworded to be consistent with GMA statutes.

WAC 173-26-211(5)(c)(ii)(G) – Deleted in response to comment about redundancy.

WAC 173-26-211(5)(c)(ii)(H) – Renumbered as (G)

WAC 173-26-221(2)(b)(i)(A) – In response to public comments, “significant” was added back in regarding vegetation removal to exclude noxious weeds.

WAC 173-26-221 Critical saltwater habitats

The scope of critical saltwater habitats in WAC 173-26-221(2)(c)(iii)(A) was restored to the original language, restoring “subsistence, commercial, and recreational shellfish beds”. The purpose of the proposed language was to enhance local government abilities to address geoduck impacts on critical saltwater habitats essential to salmon recovery, and to address other use conflicts. Affected businesses, tribes, and the Department of Commerce all expressed concerns over the proposed language. The Department of Commerce was especially concerned that the proposed language created inconsistencies with Growth Management Act statutes regarding critical areas ordinances. Commerce made suggestions for how environmental designations (WAC 173-26-211), master program provisions (WAC 173-26-221), and other elements of local shoreline programs could be used to address use conflicts and accomplish adequate environmental protection.

Ecology restored the original language and added language to the principles section (WAC 173-26-221(2)(c)(iii)(B)) and WAC 173-26-241(3)(b)(i)-(iv) to clarify the intended relationship between commercial geoduck aquaculture, critical saltwater habitats, and other uses. Local governments shall now require a conditional use permit for all new commercial geoduck aquaculture, not just in critical saltwater habitats.

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WAC 173-26-241(2)(b)(ii)(D) – To be consistent with changes made to 241(3)(b), “expanded” commercial geoduck aquaculture was removed and no longer explicitly requires a conditional use permit.

### **WAC 173-26-241(3)(b) – Aquaculture**

In seeking to make the format of the Guidelines structurally more consistent, Ecology had proposed to delete certain language from the principles subsection. Affected businesses interpreted the proposed change as a change in the state’s policy toward aquaculture. Given there has not been an official change in the state’s policy, Ecology restored the original language.

### **WAC 173-26-241(3)(b)(i)-(iv) Commercial geoduck aquaculture provisions**

Ecology changed the commercial geoduck aquaculture provisions in response to public comment and concerns over the economic impacts to small aquaculture businesses. Ecology also changed the geoduck provisions based on consultation with businesses, tribes, and local governments as directed by Governor’s Order 10-06. The subsection has been reorganized and rewritten for clarity, which has resulted in all subsections being modified or moved.

Key changes are:

A conditional use permit is required for all new commercial geoduck aquaculture projects, not just those in critical saltwater habitats. Existing and ongoing projects are not required to obtain additional permits. A conditional use permit provides for local government and Ecology review of all new geoduck projects, enabling better consistency with the Section 404/401 permits for new geoduck aquaculture, integration of new science as it becomes available consistent with SSHB 2220, and consideration of cumulative impacts as required by current statute.

By not requiring new permits for successive plantings at existing projects, the costs to businesses and local governments associated with permitting is reduced. Chapter 173-27 WAC has language that still applies and stipulates local authority, civil penalties, triggers and other aspects of permit renewals or revisions.

The rule no longer requires a conditional use permit for ‘expanded’ geoduck aquaculture.

The term “expanded” was difficult to define clearly in the rule and, due to other wording changes, is no longer necessary.

There is a wide variety in aquaculture culture methods, operations, timing of activities, and equipment – and all these elements are influenced by evolving technology. This variety makes it beyond the scope of a rule to address all possible current and future projects. Local governments must have discretion in assessing impacts and use conflicts in light of current science and knowledge, and flexibility in meeting the intent of the Act and rules.

If aquaculture is introduced onto property not covered by an existing permit, this falls under the category of new geoduck aquaculture and requires a permit.

If a site is converted from existing non-geoduck aquaculture to geoduck aquaculture, local governments have the discretion to require a conditional use permit. This allows local government to consider the impacts of conversions on a case-by-case basis.

Wording related to permit limits and conditions has been changed.

SARC did not reach broad consensus on detailed limits and conditions or the nexus between local, state and federal permits. This was primarily due to the Section 404/401 permitting process for geoduck aquaculture not being very far along. Significant progress has occurred in the past two years since the SARC recommendations were submitted to the legislature.

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Since March 2010, Ecology has been consulting with geoduck growers seeking federal permits for new projects, and the associated 401 Water Quality Certification administered by Ecology. Through these consultations and related field work, Ecology has gained a better understanding about water quality and habitat impacts from geoduck aquaculture. The permit limits and conditions in the rule amendments have been modified to better align with those Ecology expects to include in federal permits. Ecology feels such alignment meets the intent of SSHB 2220 and Governor's Order 10-06.

"At a minimum, conditional use permit limits and conditions should include, where applicable and appropriate," has been changed to read: "In order to avoid or limit impacts from geoduck aquaculture siting and operations and achieve no net loss of ecological functions, local governments should consider the following:." This language change was made to allow local governments more flexibility to respond to local conditions and current science, yet be clear that the intent of the permit is to avoid or limit impacts.

Also, the list of permit limits and conditions has been shortened and the wording directing local governments to specifically either "prohibit" or "limit" certain actions has been removed to provide local governments more flexibility and reduce costs to businesses.